

S. Lane Tucker (Bar No. 0705011)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: (907) 277-1900
Facsimile: (907) 277-1920
lane.tucker@stoel.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KICC-ALCAN GENERAL, JOINT
VENTURE, an Alaskan joint
venture,

Plaintiff,

v.

CRUM & FORSTER SPECIALTY
INSURANCE COMPANY, INC., a
Delaware corporation,

Defendant.

Case No.: 3:15-cv-00255-SLG

COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF

I. NATURE OF THE CASE

1. KICC-Alcan General, Joint Venture (“KICC-Alcan”) brings this action for relief against Crum & Forster Specialty Insurance Company, Inc. (“Crum & Forster”).

2. KICC-Alcan asks the Court to find that Crum & Forster has breached its contractual obligation to (1) defend KICC-Alcan against a civil action arising out of its performance of professional services under an agreement with the U.S. Army Corps of Engineers, and (2) indemnify KICC-Alcan for the damages it has incurred as a result of that civil action.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

KICC-Alcan General, Joint Venture v. Crum & Forster Specialty Insurance Company, Inc.,
3:15-cv-_____ [New Case]

Page 1 of 7

II. PARTIES

3. KICC-Alcan is an Alaskan joint venture, with its principal place of business located in Anchorage, Alaska.

4. Upon information and belief, Defendant Crum & Forster is a Delaware corporation with its home office in New Jersey.

III. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there exists complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to this controversy occurred in the state of Alaska.

IV. GENERAL ALLEGATIONS

The Underlying Controversy

7. On or about May 3, 2012, the United States Army Corps of Engineers entered into a contract with KICC-Alcan for the construction of the FTR-271 Brigade and Battalion Headquarters at Joint Base Elmendorf-Richardson (“Project”).

8. KICC-Alcan acted as the general contractor for the Project, developing the construction schedule and coordinating the scheduling of various subcontractors that performed the work.

9. On or about May 21, 2012, KICC-Alcan subcontracted portions of the Project to the Superior Group, Inc. (“Superior Group”), doing business as an assortment of entities.

10. The Project was beset by delays, some of which Superior Group asserted were caused by KICC-Alcan’s: (1) alleged delays in responding to requests for information and processing contract modifications; (2) alleged delays related to the

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

KICC-Alcan General, Joint Venture v. Crum & Forster Specialty Insurance Company, Inc.,

3:15-cv-_____ [New Case]

Page 2 of 7

structural steel design for the Project; and (3) alleged improper scheduling and coordination at the site of the Project.

11. On April 3, 2014, after it had completed its work on the Project, Superior Group notified KICC-Alcan that it was owed additional amounts as a result of the alleged delays.

12. On or about August 4, 2014, KICC-Alcan received from Superior Group a Request for Equitable Adjustment for alleged cumulative project delays and loss of productivity.

13. On November 5, 2014, Superior Group filed a lawsuit against KICC-Alcan, asserting a claim against KICC-Alcan's payment bond, two claims for breach of contract, and a claim for quantum meruit ("Underlying Lawsuit").

14. On or about February 5, 2015, KICC-Alcan tendered its defense of the Underlying Lawsuit to Crum & Forster.

15. On or about March 19, 2015, Crum & Forster accepted KICC-Alcan's tender of defense and indemnification for this matter.

16. On or about April 9, 2015, Crum & Forster notified KICC-Alcan that it was reconsidering its coverage position, and that it would be sending a "reservation of rights" letter.

17. On or about June 9, 2015, Crum & Forster notified KICC-Alcan that it was declining coverage, arguing for the first time that it believed there was no coverage under the Insurance Policy for this matter.

18. On or about July 6, 2015, KICC-Alcan entered into a confidential Settlement Agreement and Release of Claims, whereby Superior Group released the claims asserted in the Underlying Lawsuit in exchange for payment by KICC-Alcan.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

KICC-Alcan General, Joint Venture v. Crum & Forster Specialty Insurance Company, Inc.,
3:15-cv-_____ [New Case]

Page 3 of 7

The Insurance Policy

19. KICC-Alcan is a named insured under Crum & Forster Policy Number PKC-100852 (“Insurance Policy”).

20. The Insurance Policy provides coverage for the Policy Period, from March 31, 2014 to March 31, 2015.

21. Among other obligations, the Insurance Policy requires Crum & Forster to defend KICC-Alcan “against any ‘suit’ seeking ‘damages’” to which the Errors and Omissions Liability Coverage applies.

22. Subject to express conditions not applicable here, the Errors and Omissions Liability Coverage requires Crum & Forster to indemnify KICC-Alcan for those sums KICC-Alcan becomes legally obligated to pay as ‘damages’ because of a ‘wrongful act’ to which the Insurance Policy applies.

23. In pertinent part, the Insurance Policy defines “damages” as “the monetary amount of any judgment, award or settlement that an insured becomes legally obligated to pay as a result of a ‘claim’ or ‘suit.’”

24. The Insurance Policy defines “wrongful act” as “an act, error or omission in the rendering or failure to render ‘professional services’ by any insured covered under the Insuring Agreement of the Errors and Omissions Liability Coverage Part.”

25. The Insurance Policy defines “professional services” as “those functions performed for others by you or by other on your behalf that are related to your practice as a . . . construction manager.”

KICC-Alcan’s Claim for Coverage

26. KICC-Alcan performed “professional services” on the Project.

27. In the course of performing “professional services,” KICC-Alcan allegedly contributed to the claimed delays.

28. KICC-Alcan's alleged failures are "wrongful acts" within the meaning of the Insurance Policy.

29. The Underlying Lawsuit arises out of the "wrongful acts" allegedly committed by KICC-Alcan.

30. The Underlying Lawsuit was filed during the Policy Period.

31. KICC-Alcan timely notified Crum & Forster of the Underlying Lawsuit.

32. Because of the Underlying Lawsuit, KICC-Alcan became obligated to pay monetary damages to Superior Group.

33. The monetary damages paid by KICC-Alcan to Superior Group are "damages" because of an alleged "wrongful act" covered by the Insurance Policy.

34. Based on the complaint filed in the Underlying Lawsuit and the terms of the Insurance Policy, Crum & Forster was obligated to defend KICC-Alcan against the claims asserted in the Underlying Lawsuit.

35. Crum & Forster is obligated to indemnify KICC-Alcan for the monetary damages it has incurred as a result of the Underlying Lawsuit.

V. CAUSES OF ACTION

First Cause of Action

Breach of Contract: Duty to Defend

1. KICC-Alcan re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

2. Crum & Forster is contractually obligated to defend KICC-Alcan against the Underlying Lawsuit.

3. Crum & Forster has refused to defend KICC-Alcan against the Underlying Lawsuit.

4. Crum & Forster's refusal to defend KICC-Alcan against the Underlying Lawsuit is a breach of the insurance contract.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

KICC-Alcan General, Joint Venture v. Crum & Forster Specialty Insurance Company, Inc.,
3:15-cv-_____ [New Case]

Page 5 of 7

5. Crum & Forster's breach of the insurance contract by refusing to pay defense costs for the underlying lawsuit has caused damage to KICC-Alcan, the exact amount to be proven at time of trial, but in excess of \$170,000.

Second Cause of Action

Breach of Contract: Duty to Indemnify

1. KICC-Alcan re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

2. Crum & Forster is contractually obligated to indemnify KICC-Alcan for all damages arising out of the Underlying Lawsuit.

3. Crum & Forster has refused to indemnify KICC-Alcan for all damages arising out of the Underlying Lawsuit.

4. Crum & Forster's refusal to indemnify KICC-Alcan for all damages arising out of the Underlying Lawsuit is a breach of the insurance contract.

5. Crum & Forster's breach of the insurance contract has caused damage to KICC-Alcan, the exact amount to be proven at time of trial.

Third Cause of Action

Bad Faith

1. KICC-Alcan re-alleges and incorporates by reference the allegations contained in the preceding paragraphs.

2. Crum & Forster owed KICC-Alcan, as its insured, a duty of good faith and fair dealing in the handling of KICC-Alcan's insurance claim.

3. Crum & Forster breached its duty to KICC-Alcan by concluding without a reasonable basis that the claims asserted by Superior Group in the Underlying Lawsuit do not fall within the coverage of the Insurance Policy.

4. As a direct and proximate result of Crum & Forster's failure to act in good faith and deal fairly with KICC-Alcan, KICC-Alcan has suffered the following injuries and damages:

- a. Loss of the benefits due it under the Insurance Policy;
- b. Non-economic damages; and
- c. Consequential economic damages.

VI. JURY DEMAND

1. KICC-Alcan respectfully request trial by jury on all issues so triable.

VII. REQUEST FOR RELIEF

WHEREFORE, KICC-Alcan requests the following relief:

1. Judgment against Crum & Forster for damages caused as a result of its breaches of contract and bad faith conduct.
2. An award of costs, fees, and interest; and
4. Such other and further relief as the Court deems just and equitable.

DATED: December 17, 2015

STOEL RIVES LLP

By: s/ S. Lane Tucker
S. LANE TUCKER
(BAR NO. 0705011)

Attorney for Plaintiffs
KICC-ALCAN GENERAL,
JOINT VENTURE

80658026.7 0081412-00003

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

KICC-Alcan General, Joint Venture v. Crum & Forster Specialty Insurance Company, Inc.,

3:15-cv-_____ [New Case]

Page 7 of 7

Case 3:15-cv-00255-SLG Document 1 Filed 12/17/15 Page 7 of 7